

# **EXHIBIT 1**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., AND  
BAYER HEALTHCARE LLC,

PLAINTIFFS,

V.

BAXTER INTERNATIONAL INC., AND  
BAXTER HEALTHCARE CORPORATION,

DEFENDANTS.

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C.A. NO. 05-349-GMS

JURY TRIAL DEMANDED

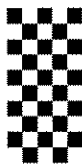
DECLARATION OF JAMES GIBLIN

I, James A. Giblin, declare as follows:

1. My current address is: 5 Sheryl Court, Pleasant Hill, CA 94523.
2. I am currently retired.
3. I am an attorney licensed to practice law in the states of California and Illinois.
4. I submit this declaration in support of Plaintiffs Motion to Disqualify Townsend and Townsend and Crew LLP and Susan Spaeth in the above captioned litigation.
5. I was employed as an attorney at Cutter Laboratories ("Cutter") beginning in 1977.
6. During my employment there, through a series of corporate transactions, Cutter was renamed Miles Laboratories, then Miles Inc. ("Miles") and finally Bayer Corporation ("Bayer").
7. I retired from Bayer in 2001.
8. In 1992 and 1993, I was employed as an Associate Patent Counsel for Miles.
9. In 1992 and 1993, the law firm of Townsend and Townsend and Crew LLP ("Townsend") was employed by Miles to represent it asserting infringement of


United States Letters Patent No. 4,396,608 (the “Tenold Patent”) against, *inter alia*, Alpha Therapeutic Corporation (the “ATC Case”).

10. The ATC Case was filed on or about May 29, 1992 and was resolved by settlement of the parties and stipulated dismissal entered in January 1993.
11. Attached as Exhibit A to this Declaration is a true and correct copy of the original *Complaint* filed by Townsend on behalf of Miles in the ATC Case.
12. Townsend provided Miles with two infringement opinion letters prior to filing the ATC Case.
13. Pursuant to the Protective Order, I was designated as the representative of Miles to be given access to confidential materials and to “closely monitor the progress of this action” on Mile’s behalf.
14. Attached as Exhibit B to this Declaration is a true and correct copy of the *Protective Order* entered by the Court in the ATC Case.
15. The Tenold Patent issued in 1983 to Robert A. Tenold and was assigned to Cutter Laboratories.
16. Robert A. Tenold was in 1992 and 1993 an employee of Miles.
17. In 1992 and 1993, Susan Spaeth (“Spaeth”) was an associate with the Townsend the firm.
18. Ms. Spaeth was personally involved in the preparation of Mile’s responses to discovery requests for the ATC Case.
19. Ms. Spaeth personally provided detailed legal advice to Miles regarding searching for documents responsive to discovery in the ATC Case.



20. Ms. Spaeth was involved personally in identifying and instructing expert witnesses on behalf of Miles in the ATC Case.
21. Ms. Spaeth had access to and reviewed confidential technical documents relating to the Tenold Patent for the ATC Case. In particular, Ms. Spaeth investigated and collected Miles documents on the effect of ionic strength and/or pH on immune serum globulin anticomplement activity.
22. Ms. Spaeth had direct attorney client privileged communications with me.
23. Ms. Spaeth had direct attorney client privileged communications with Robert A. Tenold.
24. It is my recollection that Ms. Spaeth personally assisted in preparing Robert A. Tenold in anticipation of his deposition in the ATC Case.
25. In discovery responses prepared by Ms. Spaeth, witnesses relevant to issues in the ATC Case included, *intra alia*, myself, Gautram Mitra and Ralph Rousell.
26. Attached as Exhibit C to this Declaration is a true and correct copy of the *Stipulated Order Modifying Disclosure Date for Technical Experts*, signed by Ms. Spaeth on behalf of Miles in the ATC Case.

Dated: August 24, 2006

  
James Giblin

**A**

JS 44  
(Rev. 07/86)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

MILES INC.,  
an Indiana corporation

## DEFENDANTS

ALPHA THERAPEUTIC CORPORATION,  
a California corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Alameda  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Los Angeles  
(IN U.S. PLAINTIFF CASES ONLY)

VENUE: SAN FRANCISCO XX SAN JOSE

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Albert J. Hillman, Esq. (415) 543-9600  
TOWNSEND and TOWNSEND  
One Market Plaza, Steuart Street Tower  
San Francisco, CA 94105

ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY:

Patent infringement under 35 U.S.C. § 271

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 FIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC (405(g)) <input type="checkbox"/> 863 DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

## VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:  
 JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

May 29, 1992

SIGNATURE OF ATTORNEY OF RECORD

Albert J. Hillman

UNITED STATES DISTRICT COURT

1 TOWNSEND and TOWNSEND  
2 Albert J. Hillman  
3 Gerald P. Dodson  
4 Minaksi Bhatt  
5 Steuart Street Tower  
6 One Market Plaza  
7 San Francisco, CA 94105  
8 Telephone: (415) 543-9600  
9 Attorneys for Plaintiff

FILED  
JUN 1 9 40 AM '92  
RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 MILES INC., an Indiana  
13 corporation,

14 Plaintiff,

15 v.

16 ALPHA THERAPEUTIC CORPORATION,  
17 a California corporation,

18 Defendant.

C92 1975

Civil Action No.

COMPLAINT

19 1. Plaintiff, MILES INC. ("MILES") is a corporation  
20 duly organized and existing under the laws of the State of  
21 Indiana, having a place of business at 4th and Parker Streets,  
22 Berkeley, California 94701.

23 2. On information and belief, Defendant ALPHA  
24 THERAPEUTIC CORPORATION ("ALPHA") is a corporation duly organized  
25 under the laws of the State of California, having a principal  
26 place of business at 5555 Valley Boulevard, Los Angeles,  
27 California 90032.

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Jurisdiction

3. This action arises under the Patent Laws of the United States, U.S.C. Title 35, §§ 100, et seq., as hereinafter more fully appears.

Claim For Relief

4. On August 2, 1983, United States Letters Patent No. 4,396,608 was duly and legally issued to Plaintiff's wholly owned subsidiary, Cutter Laboratories of Berkeley, California. Subsequently the patent was assigned through corporate predecessors to Plaintiff Miles Inc. Plaintiff has been and presently is the owner of said Letters Patent. (Copy attached as Exhibit A.)

5. On February 12, 1985 United States Letters Patent No. 4,499,073 was duly and legally issued to Plaintiff's wholly owned subsidiary, Cutter Laboratories of Berkeley, California. Subsequently the patent was assigned through corporate predecessors to Plaintiff Miles Inc. Plaintiff has been and presently is the owner of said Letters Patent. (Copy attached as Exhibit B.)

6. Defendant has been and still is infringing both of said Letters Patents by making, using and selling a solution of human intravenous immunoglobulin under the mark Venoglobulin®-S.

7. Plaintiff and its predecessors have placed the required statutory notices on all human intravenous immunoglobulin solutions manufactured and sold by them under said Letters Patents.

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1           8. On information and belief, Defendant has at all  
2 times relevant herein acted with full and actual notice and  
3 knowledge of Plaintiff's patent rights and in willful, deliberate  
4 violation and infringement of the same.

5           9. The willful and deliberate nature of each of  
6 Defendant's infringement of Plaintiff's patents makes this case  
7 exceptional within the meaning of 35 U.S.C. § 285, and Plaintiff  
8 is entitled to recover from Defendant its costs of this suit,  
9 including reasonable attorneys' fees.

10           WHEREFORE, Plaintiff demands an injunction against  
11 continued infringement, damages, and an assessment of interest,  
12 prejudgment interest, attorneys' fees and costs against  
13 Defendant.

14  
15           TOWNSEND and TOWNSEND

16  
17           Dated: May 29, 1992

18           By   
19           Albert J. Hillman  
20           Attorneys for Plaintiff

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28           AJH/mcd  
          B\127972.C

**B**



1 WHEREAS, the parties to this litigation are engaged in a  
2 discovery program which involves the production of documents and  
3 things, and the taking of testimony by oral deposition from both  
4 party and nonparty witnesses;

5 WHEREAS, Confidential Information may be produced by a party  
6 and nonparty;

7 WHEREAS, such party and nonparty may have need to apply to the  
8 Court for an order limiting the disclosure of such Confidential  
9 Information; and

10 WHEREAS, Rule 26(c) of the Federal Rules of Civil Procedure  
11 provides that a protective order may be issued by the Court to  
12 protect, among other things, trade secret or other confidential  
13 information;

14 THEREFORE, IT IS HEREBY STIPULATED AND AGREED TO AS FOLLOWS:

15 1. Documents, things or other information provided by any  
16 party or nonparty as part of discovery in this action or at trial  
17 may be designated by such party or nonparty as either "Confidential"  
18 or "Special Confidential." As a general guideline, materials  
19 designated as "Confidential" shall be those things contemplated by  
20 Rule 26(c)(7) of the Federal Rules of Civil Procedure which has not  
21 been made public, which the provider of the material regards as  
22 proprietary financial information, proprietary business information  
23 or proprietary technical information, and which has enough  
24 confidential value that while they may be disclosed to the parties  
25 in accordance with the terms of this Protective Order, for purposes  
26 of this action, they must nonetheless be protected against  
27 disclosure to third parties.

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1 Confidential information may include, but is not limited to,  
2 trade secrets, research and development information, business  
3 proposals and strategies, balance sheet information, invoices, price  
4 lists, financial statements, lists of present or prospective  
5 customers, contracts and other business and technical arrangements  
6 with third parties. By contrast, materials designated as "Special  
7 Confidential" shall be only those Confidential materials which are  
8 of such a highly proprietary and confidential nature that they must  
9 be protected from disclosure to anyone except a carefully selected  
10 group of people as set forth herein who are closely associated with  
11 the prosecution of this action.

12 2. Any party or nonparty wishing to come within the  
13 provisions of this Protective Order shall designate in writing the  
14 documents, information or portion thereof which it considers  
15 confidential. In the instance of documents, the items can be  
16 designated by a mark of "Confidential-Subject to Protective Order"  
17 or "Special Confidential-Subject to Protective Order" on the  
18 document.

19 In the case of interrogatory answers or responses to requests  
20 for admissions and the information contained therein, designation  
21 may be made by placing on the pages containing the Confidential or  
22 Special Confidential information the legend "Confidential-Subject  
23 to Protective Order" or "Special Confidential-Subject to Protective  
24 Order."

25 In the case of tangible items, designation may be made by  
26 visibly marking the item "Confidential-Subject to Protective Order"  
27 or "Special Confidential-Subject to Protective Order."

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1       Should files or records be produced for inspection, no marking  
2       need be made by the provider in advance of the inspection. For  
3       purposes of the inspection, all files and records so produced shall  
4       be considered as marked "Special Confidential-Subject to Protective  
5       Order." Thereafter, upon selection of specified documents for  
6       copying by the inspecting party, the provider shall mark as  
7       "Confidential-Subject to Protective Order" or "Special Confidential-  
8       Subject to Protective Order" the copies as may contain Confidential  
9       information or Special Confidential information at the time the  
10      copies are produced to the inspecting party. Except as otherwise  
11      provided herein, the producing party (i.e., provider) shall make  
12      such confidentiality designations at the time of production. Any  
13      other party then has five (5) business days after such production  
14      to designate further documents as confidential from the group  
15      produced.

16       3. In the instance of deposition testimony, the provisions of  
17      this Protective Order may be invoked in a timely manner by the  
18      witness under deposition, or counsel by giving adequate warning on  
19      the record of such invocation to counsel for the other parties.  
20      When such designation of Confidential or Special Confidential  
21      information is made those portions of the deposition involving such  
22      information will be taken with no one present except (1) those  
23      persons who are authorized to have access to such information in  
24      accordance with paragraphs 5 and 6 of this Order, (2) the reporter,  
25      and (3) the witness whose deposition is being taken, who may see a  
26      document identified as Confidential or Special Confidential at that  
27      time only if that witness has previously seen, or has been sent the

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1 document. The witness under deposition or counsel shall also have  
2 the right within ten (10) days of receiving a transcript of the  
3 deposition to designate or change the level of designation of the  
4 transcript or portions thereof. Prior to such designation or  
5 expiration of the ten (10) day period, the entire deposition  
6 transcript shall be deemed Special Confidential.

7 4. Information designated as "Confidential" or "Special  
8 Confidential" shall be kept confidential, shall be used only in  
9 connection with this litigation and not for any business,  
10 competitive, governmental, or other purpose whatsoever. Further,  
11 such information shall not be given, shown, made available,  
12 disclosed or otherwise communicated in any manner to anyone except  
13 as provided in this Order. Copies of designated documents shall be  
14 made only to the extent necessary to enable counsel to prepare this  
15 action for trial and conduct trial.

16 All Confidential and Special Confidential information shall be  
17 retained by outside counsel and none shall be stored at any facility  
18 of the parties.

19 All Confidential and Special Confidential information protected  
20 under this Order shall be disclosed at trial or hearing only before  
21 those persons authorized in paragraphs 5 and 6 of this Order.

22 5. Documents, deposition testimony, or other materials  
23 designated as "Confidential," as well as any copies or excerpts  
24 therefrom, or analyses or reports which pertain thereto, may be made  
25 available only to:

26 a. Attorneys of record for the parties, along with their  
27 associates, of counsel, co-counsel and clerical personnel to

1 whom it is necessary that the material be shown for purposes of  
2 this litigation;

3 b. Judges, Jurors, Magistrates, Discovery Referees, law  
4 clerks and other clerical personnel of the Court before whom  
5 this action is pending;

6 c. Independent experts, consultants or testing  
7 laboratories not associated directly or indirectly with a  
8 party, who are employed or retained for the purposes of  
9 furnishing technical or expert services or to give testimony  
10 with respect to the subject matter of this action and who are  
11 qualified pursuant to the provisions of paragraph 7;

12 d. The author(s) of the designated material or anyone  
13 shown to have been a recipient;

14 e. Directors, officers and employees of the parties  
15 themselves to whom it is necessary that the material be shown  
16 for purposes of this litigation and who are qualified pursuant  
17 to the provisions of paragraph 7; and

18 f. Actual or potential witnesses in connection with the  
19 depositions or examinations of such individuals, or for the  
20 preparation thereof, may be shown specific items of Confidential  
21 information concerning which such individuals may have knowledge or  
22 information, or may reasonably be expected to have knowledge or  
23 information, and who are qualified pursuant to the provisions of  
24 paragraph 7.

25 6. Documents, deposition testimony, or other material  
26 designated as "Special Confidential," as well as any copies or  
27 excerpts therefrom, or analyses or reports which pertain thereto,

1 may be made available only to:

2 a. Attorneys of record for the parties, along with their  
3 associates, of counsel, co-counsel and clerical personnel to  
4 whom it is necessary that the material be shown for purposes of  
5 this litigation;

6 b. Judges, Jurors, Magistrates, Discovery Referees, law  
7 clerks and other clerical personnel of the Court before whom  
8 this action is pending;

9 c. Independent experts, consultants or testing  
10 laboratories not associated directly or indirectly with a party  
11 to whom it is necessary that the material be shown for purposes  
12 of this litigation, who are employed or retained for the  
13 purposes of furnishing technical or expert services or to give  
14 testimony with respect to the subject matter of this action,  
15 and who are qualified pursuant to the provisions of paragraph  
16 7;

17 d. The author(s) of the designated material or anyone  
18 shown to have been a recipient;

19 e. One representative for each of the parties to this  
20 action who will be responsible for closely monitoring the  
21 progress of this action on the party's behalf. The initial  
22 representatives will be James Giblin, of Miles, Inc. and Edward  
23 Colton of Alpha Therapeutic Corp.

24 7. Prior to any disclosure pursuant to paragraphs 5 and 6  
25 hereof, except disclosures pursuant to paragraphs 5(b) and 6(b)  
26 above, counsel making the disclosure shall obtain a written  
27 Affidavit in the form attached hereto as Appendix A from each person  
28

1 to whom disclosure is made, acknowledging that the document,  
2 information or tangible item has been designated as Confidential or  
3 Special Confidential information as the case may be and is subject  
4 to this Protective Order, that the person has read this Protective  
5 Order and understands it, that such person agrees to comply with and  
6 be bound by this Protective Order, and that such person is aware  
7 that contempt sanctions may be entered for violation of this  
8 Protective Order. Further, any party seeking to disclose any  
9 material designated as "Confidential" or "Special Confidential" to  
10 an independent expert, independent consultant, independent testing  
11 laboratory, or director, officer or employee of a party or actual  
12 or potential witnesses in connection with their deposition or  
13 examination or preparation thereof shall first qualify such person  
14 by providing any party or nonparty who designated the material and  
15 all opposing counsel with: (a) the name of the person, (b) the  
16 present employment status of the person, and (c) the Affidavit of  
17 the type attached to this Protective Order as Appendix A. Within  
18 five (5) days of the receipt of this information, the designating  
19 party or nonparty may object to the proposed disclosure and schedule  
20 a "meet and confer" conference, which may be telephonic, with the  
21 requesting party to attempt to resolve the dispute. If the dispute  
22 cannot be resolved at the "meet and confer" conference, the  
23 objecting party may file a motion for a protective order within ten  
24 (10) days of the parties' conference to be heard at the Court's  
25 earliest normal motion date available. No disclosure shall be made  
26 until any such motion has been decided.

27 All signed Affidavits shall be maintained through the  
28

1 conclusion of this action. The burden of establishing the need for  
2 excluding persons from access to Confidential or Special  
3 Confidential information under the terms of this Protective Order  
4 shall be on the objecting party.

5 Notwithstanding the foregoing, the provisions of paragraph 3  
6 hereof shall take precedence with respect to material designated at  
7 a deposition as Confidential or Special Confidential and the witness  
8 has previously seen or has been sent the document.

9 8. Any party or nonparty who wishes to file material with the  
10 Court which is designated under this Protective Order must file such  
11 designated material in a sealed envelope or other sealed container  
12 marked on the outside with the title of this action and a statement  
13 substantially in the following form:

14 **"CONFIDENTIAL" [OR "SPECIAL CONFIDENTIAL"]**

15 This document is subject to a PROTECTIVE ORDER  
16 and may not be examined or copied except in  
compliance with that order.

17 9. If, at any time during the preparation for trial or during  
18 the trial of this action, counsel for any party believes that  
19 counsel for any other party or nonparty is unreasonably designating  
20 certain material as "Confidential" or "Special Confidential," or  
21 believes that it is necessary to disclose designated information to  
22 persons other than those permitted by this Protective Order, the  
23 objecting counsel shall first "meet and confer" with counsel for the  
24 designating party to try to informally resolve the dispute. If the  
25 dispute cannot be resolved informally, the objecting counsel may  
26 make an application to the Court requesting that specifically  
27 identified documents, information, and/or deposition testimony be  
28

1 excluded from the provisions of this Protective Order or be  
2 available to specified other persons under stated conditions.

3 10. The restrictions set forth in this Order will not  
4 apply to information which is known to the receiving party or the  
5 public before the date of its disclosure to the receiving party, or  
6 which becomes known to the public after the date of its disclosure  
7 to the receiving party, provided that such information does not  
8 become publicly known by any act or omission of the receiving party,  
9 its employees or agents which would be in violation of this  
10 Protective Order. If such public information is designated as  
11 "Confidential" or "Special Confidential," the receiving party must  
12 inform the producing party of the pertinent circumstances before the  
13 restrictions of this Order will become inapplicable.

14 11. This Protective Order will be without prejudice to  
15 the right of any party or nonparty to oppose production of any  
16 information on the ground of attorney/client privilege, work product  
17 immunity or any other protection, privilege or basis provided under  
18 the law.

19 12. Copies of all "Confidential" and "Special  
20 Confidential" materials shall be returned to the producing party at  
21 the termination of this action or at the option of the provider  
22 destroyed, except that one copy of documents or exhibits filed with  
23 the Court and work product may be retained in counsel's files  
24 provided such work product, documents and exhibits are marked with  
25 the title of this action and "CONFIDENTIAL - Subject to Protective  
26 Order" or "SPECIAL CONFIDENTIAL - Subject to Protective Order" as  
27 the case may be and be segregated from non-confidential materials.

28

1 The provisions of this Protective Order insofar as they restrict  
2 disclosure, communication of and use of Confidential and Special  
3 Confidential information produced hereunder shall continue to be  
4 binding after the conclusion of this action.

5 13. This Protective Order shall not prevent any party  
6 from applying to the Court for relief therefrom, or from applying  
7 to the Court for further or additional protective orders, or from  
8 agreeing between themselves to modify or vacate this Protective  
9 Order, subject to the approval of the Court.

10

11

TOWNSEND and TOWNSEND

12

13

Dated: September 15, 1992

14

By: Guy W. Chambers  
Guy W. Chambers  
Attorneys for Plaintiff  
MILES, INC.

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THELEN, MARRIN, JOHNSON & BRIDGES

Dated: September 22, 1992

  
By: Robert Pringle

SUGHRUE, MION, ZINN,  
MACPEAK & SEAS

Dated: September 14, 1992

  
By: Howard L. Bernstein

Attorneys for Defendant  
ALPHA THERAPEUTIC CORP.

IT IS SO ORDERED.

Dated: 9.23.92

  
JUDGE of the U.S. District Court

PROTECTIVE ORDER ACKNOWLEDGEMENT

I, \_\_\_\_\_, state that I have read the "Stipulated Protective Order" in the case of Miles, Inc. v. Green Cross Corporation and Alpha Therapeutic Corp., Civil Action No. C92 1975 VRW (N.D. Cal.), that I understand the provisions prohibiting the disclosure or use of confidential information for any purpose or in any manner not connected with this case, and that I agree to abide by and be bound by its terms.

Dated: \_\_\_\_\_

**C**

FILED

OCT 20 6 04 PM '92

RICHARD W. WIERING  
CLERK  
U.S. DISTRICT COURT  
NO DIST OF CA

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3/A

15 Attorneys for Defendant  
16 Alpha Therapeutic Corporation

17 IN THE UNITED STATES DISTRICT COURT  
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
19

20	MILES INC.,	)	Civil Action No.
		)	92 1975 VRW
21	Plaintiff,	)	
		)	
22		)	STIPULATED ORDER MODIFYING
		)	DISCLOSURE DATE FOR
23	v.	)	TECHNICAL EXPERTS
		)	
24	ALPHA THERAPEUTIC CORPORATION et al.,	)	
		)	
25		)	
	Defendants.	)	
26		)	

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COPIES MAILED TO  
PARTIES OF RECORD

1 The parties, through their attorneys, hereby stipulate to  
2 the following modification of the disclosure date for technical  
3 experts:

4 1. The complete statement and disclosure of each party's  
5 technical expert, required by the Court's Order For Pretrial  
6 Preparation, shall be served on all other parties on or before  
7 Monday, November 2, 1992.

8 2. The complete statement and disclosure of each party's  
9 other experts shall be served on all other parties on or before  
10 Friday, October 16, 1992, as originally ordered in the Court's Order  
11 For Pretrial Preparation.

12 3. The complete statement and disclosure of each party's  
13 rebuttal technical expert, required by the Court's Order For  
14 Pretrial Preparation, shall be served on all parties on or before  
15 Wednesday, December 2, 1992 and the complete statement and  
16 disclosure of each party's rebuttal experts, on other than technical  
17 matters, shall be served on all other parties on or before November  
18 16, 1992, as originally ordered in the Court's Order For Pretrial  
19 Preparation.

20 TOWNSEND and TOWNSEND  
21 Dated: October 8, 1992 By: Susan M. Spaeth  
22 Susan M. Spaeth

23 Attorneys for Plaintiff MILES INC.  
24 THELEN, MARRIN, JOHNSON & BRIDGES

25 Dated: October 8, 1992 By: Robert B. Pringle  
26 Robert B. Pringle

SUGHRUE, MION, ZINN, MACPEAK & SEAS

Date: \_\_\_\_\_

By: \_\_\_\_\_

Howard L. Bernstein

Attorneys for Defendant  
ALPHA THERAPEUTIC CORP.

IT IS SO ORDERED.

Date: 10.16.92

By: \_\_\_\_\_

United States District Court Judge